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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF UTAH**

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**ATHERTON,**

**Plaintiff,**

**v.**

**AMTRACK RAILROAD ET AL.,**

**Defendants.**

**AMENDED ORDER AFFIRMING &  
ADOPTING REPORT AND  
RECOMMENDATION**

**Case No. 2:19-CV-00378-DAK-CMR**

**Judge Dale A. Kimball**

**Magistrate Judge Cecilia M. Romero**

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On December 8, 2021, this court issued an Order Affirming and Adopting Report and Recommendation, affirming Magistrate Judge Romero's October 7, 2021 Report and Recommendation, and stating that Plaintiff had not filed an objection to the Report and Recommendation. Plaintiff, however, had mailed an objection on December 3, 2021, and the court received and filed it on December 8, 2021, mere hours after the court had entered the order adopting and affirming the Report and Recommendation. This objection was therefore mailed three days after the November 30th filing deadline, and filed eight days after the filing deadline. Nevertheless, the court has reviewed the filed objection, and now reaffirms its decision.

In her objection, Plaintiff clarifies that her claims are for a First Amendment violation of her freedom of speech, a breach of contract, and an ADA violation. With respect to Plaintiff's First Amendment claim, the court finds that none of the information that Plaintiff provides impacts Magistrate Judge Romero's conclusion that it is frivolous and fails to meet the required plausibility standard to withstand a 28 U.S.C. § 1915(e) dismissal. In addition, Plaintiff's

contract claim does not contain sufficient facts which, accepted as true, would state a claim to relief that is plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court finds, even under the less stringent pleading standards afforded *pro se* clients, that it cannot draw a reasonable inference from the facts provided that Amtrak is liable for breach of contract. Thus, this claim does not withstand the recommended 28 U.S.C. § 1915(e) dismissal either.

Finally, with respect to Plaintiff's ADA claim, under 42 U.S.C. § 12101, it is proper for this court to dismiss it at this time as well because Plaintiff has provided no evidence that she has exhausted her administrative remedies.

Therefore, Plaintiff's objection does not persuade the court to change its decision. The court reaffirms its decision to adopt and affirm Magistrate Judge Romero's Report and Recommendation to dismiss Plaintiff's Complaint without prejudice.

DATED this 9 day of December, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL  
United States District Judge